TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible] 1902.

No. [illegible] 209.

THE STATE OF TENNESSEE ON THE RELATION OF G. L. MALONEY ET AL., PLAINTIFFS IN ERROR,

vs.

STEPHEN P. CONDON, T. T. McMILLAN, JAMES RICH, AND H. C. ANDERSON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

FILED DECEMBER 10, 1901.

(18,349.)

(18,349.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 496.

THE STATE OF TENNESSEE ON THE RELATION OF G. L. MALONEY ET AL., PLAINTIFFS IN ERROR,

vs.

STEPHEN P. CONDON, T. T. McMILLAN, JAMES RICH, AND H. C. ANDERSON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 3, 1902.

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a Chancery Cause, 3rd Circuit, Knox County.

Parties:

STATE OF TENNESSEE on the Relation of G. L. MALONEY *et al.*, Complainants,
vs.
STEPHEN P. CONDON ET AL., Defendants. } No. 15.

Solicitors:

Green & Shields and Pickle & Turner, solicitors for compl'ts.
C. T. Cates, Jr., and J. W. Caldwell, solicitors for def'ts.

Filed April 25, 1901.

ALEX. McMILLAN, *Clerk.*

Appeal bon-, $250.00, Green & Shields, & Pickle & Turner, securities.

1 Transcript of the record in the case of State on relation of G. L. Maloney and others *vs.* S. P. Condon *et al.*, in the chancery court of Knox county, Tennessee, the same being cause No. 8058 on the rule docket of said court.

Prosecution Bond.

Filed March 11, 1901. J. F. Chumbley, C. & M.

STATE OF TENNESSEE:

Know all men by these presents: That we, State of Tennessee, on relation of G. L. Maloney *et al.*, and Green and Shields, security are held and firmly bound unto Stephen P. Condon *et al.*, in the penal sum of two hundred and fifty dollars, to be void on condition that said principal obligors shall prosecute with effect a suit which they are about to commence in said court against said obligee, or pay all costs and damages incident on failure thereof, or which may be adjudged against them.

March 11th, 1901.

G. L. MALONEY ET AL., [SEAL.]
By GREEN, *Att'y.*
GREEN AND SHIELDS, *Sec.* [SEAL.]

Original Bill.

Filed March 11th, 1901. J. F. Chumbley, C. & M.

THE STATE OF TENNESSEE on the Relation of T. A. RAMBO and G. L. Maloney, G. H. St-ong, S. L. England, Sam. Vance, J. F. C. Harrell, and R. L. Peters, Relators, all Citizens and Residents of Knox County, Tennessee,

against

STEPHEN P. CONDON, T. T. MCMILLAN, and JAMES RICH and H. C. Anderson, All Residents of Knox County, Tennessee

To the Hon. Joseph W. Sneed, circuit judge holding the chancery court at Knoxville, Tennessee:

2 The State of Tennessee, on the information of the said relators, represents to the court that at the January term, 1898, G. H. Strong and T. A. Rambo, were duly and legally elected by the county court of Knox county, Tennessee, members of the pike commission of Knox county, for the term of four years, which would make their terms of office expire in January, 1902, and G. L. Maloney, who is the judge of Knox county, Tennessee, is by operation of the law, *ex officio* chairman of said commission.

The said Sam. Vance and J. F. C. Harrell were duly elected members of the said workhouse commission by the said county court of Knox county, Tennessee, at its January term, 1901, which would make their terms of office expire in 1903. The said S. L. England and I. N. White were duly elected workhouse commissioners of Knox county, Tennessee, at its January term, 1900, which would make their terms of office expire in 1902, and the said G. L. Maloney as judge of the county is *ex officio* chairman of the said commission. The said R. L. Peters was elected superintendent of the workhouse in January, 1898, which would make his term of office expire in January, 1902. All of said officers were duly and legally elected and inducted into their respective offices and assumed the duties thereof, and up to the time of the qualification of defendants, to wit, on March 2, 1901, continued to perform the duties, and exercise the functions and receive the emoluments pertaining to said offices.

II.

The State of Tennessee, on the information of the said relators, now further show to the court that on Feb. 8, 1901, the General Assembly of the State of Tennessee passed an act, which was approved by the governor, and went into effect on the same day, with the following caption, viz:

"An act to create a board of public road commissioners, to regulate the laying out and working of public roads in this State,
3 in counties having a population of not less than 70,000 and not more than 90,000, under the Federal census of the year 1900, or any subsequent Federal census, and to provide a method for the management and control of county workhouses, in counties coming under the provision- of this act."

III.

The State of Tennessee, on the information of said relators, now further represents to the court that under and in pursuance of said act, the Hon. Benton McMillin, governor of the State of Tennessee, on the 16th day of February, 1901, appointed the defendants, Stephen P. Condon, James Rich and T. T. McMillan, as the board of public road commissioners. The said Stephen P. Condon was appointed superintendent of public roads, and the other two defendants were appointed associate members of the said road commission, and the said Benton McMillin has issued to the defendants commissions as such public road commissioners. The said defendants, under and by virtue of their said appointments and commissions, aforesaid, gave bond and qualified on March 2nd, 1901, and are now attempting to perform the duties of the said offices. While the act in question referred to in the second paragraph of this bill does not in term- repeal the laws under which the said pike commissioners, the said workhouse commission and the said R. L. Peters were elected and held their respective offices aforesaid, still the defendants are assuming that it has been repealed, and they have in fact ousted said commissioners and superintendent from their respective positions, and have deprived them of their privileges and powers. The defendant, H. C. Anderson, has, as your orators are informed, been elected by the commissioners as manager of the workhouse.

Your orators, who are all citizens of Knox county, Tennessee, respectfully represent and charge that the act of February 8th, 1901, under which the defendants are claiming their offices aforesaid, and are assuming to perform the duties thereof, is in plain violation of the constitution of the State of Tennessee, and that said act
4 is illegal, null and void, and is not effective to deprive the said parties of the several offices aforesaid, to which they were regularly elected or to the rights, powers, privileges emoluments thereof.

Your relators further charge that in fact and in law the said pike commissioners, workhouse commissioners and said superintendent of the workhouse above named are the only real, true, and legal officers, and that they have been unlawfully and wrongfully ousted and ejected by the defendants from their said offices, and that the said defendants are unlawfully holding and exercising said offices of public road commissioners and superintendent of roads and associate members, and that they are usurpers of said offices.

IV.

The premises considered, the prayer is,

1st. That the defendants, Stephen P. Condon, James Rich, and T. T. McMillan, and H. C. Anderson, named in the caption, may be made such by due process, and that they may be required to answer the allegations of this bill fully and specifically on their oaths.

2nd. That the said defendants may be enjoined from holding the said offices of public road commissioners or superintendent of public roads or associate members of said road commission, or manager of the workhouse, or from exercising any of the powers and rights which the said act of February 8th, 1901, attempts to confer upon them, and that they may be enjoined from receiving any of the emoluments appertaining to the said offices under and by virtue of the said unconstitutional and void act, and that upon final hearing said injunction may be made perpetual.

3rd. That the said defendants may be required to execute a bond in a sufficient amount required by law to indemnify the said ejected officers against all loss or damage by reason of their being deprived of their offices aforesaid, and to hold them harmless by reason of their having been ousted from their said offices.

4th. That upon final hearing a decree may be rendered declaring that the said act of February 8th, 1901, is unconstitutional, null, and void, and that the same confers no right upon the defendants, and that the defendants are not entitled to exercise any of the powers and privileges therein contained, or to enjoy any of the rights and emoluments therein given to them, and that they be required to surrender same and turn over all the powers, property and privileges thereof to the rightful owners aforesaid.

5th. For general relief.

This is the first application for an injunction in this case.

G. McHENDERSON,
Att'y Gen. 2nd Judicial Circuit & Knox and Sevier Counties, in the State of Tennessee.

PICKLE AND TURNER,
GREEN AND SHILEDS, *Sol's.*

STATE OF TENNESSEE, }
Knox County. }

Personally appeared before me, the undersigned authority, Sam. Vance, Geo. L. Maloney, S. L. England, R. L. Peters, and T. A. Rambo, relators in the foregoing bill, with whom I am personally acquainted, and made oath in due form of law that the statements contained in the said bill as of their own knowledge are true, and those made on information and belief they believe to be true.

G. H. STRONG.
SAM. VANCE*M.*
S. L. ENGLAND.
T. A. RAMBO.
G. L. MALONEY.
R. L. PETER.

Sworn to and subscribed before me this March 15th, 1901.

J. F. CHUMBLEY, *C. & M.*
W. K. ANDERSON,
Notary Public.

Endorsed.

We agree to hold the State of Tennessee harmless from all costs of this suit, and we hereby acknowledge ourselves liable for
6 the costs thereof in case they are taxed against the complainants.

This March 5th, 1901.

GREEN AND SHIELDS.

Subpœna to Answer.

Issued 11th Day of March, 1901.

STATE OF TENNESSEE:

Chancery Court at Knoxville.

Summon Stephen P. Condon, T. T. McMillan, James Rich and H. C. Anderson to appear before the chancery court at Knoxville, on or before the third Monday in March, 1901, to answer the original bill which the State of Tennessee on the relation of G. L. Maloney *et al.* has filed in said court against them, and have you then and there this writ.

Witness J. F. Chumbley, clerk & master of our said court, at office in Knoxville, this 11th day of March, 1901.

J. F. CHUMBLEY, *C. & M.*

Notice.

To the above-named defendants:

You are hereby notified that you are required to make defense in this case on or before the third Monday of March, 1901, or judgment *pro confesso* will be entered against you.

J. F. CHUMBLEY, *C. & M.*

Endorsed.

Came to hand 11th day of March, 1901. Executed as commanded and left a copy of the bill with T. T. McMillan and a copy of this subpœna to answer with each adult defendant.

This 12th day of March, 1901.

J. W. FOX, *Sheriff,*
By M. W. HARDIN, *D. Sheriff.*

Order Overruling Motion for Injunction.

THURSDAY, *March 21st*, 1901.

Court met pursuant to adjournment, present and presiding
7 the Honorable Jos. W. Snedd, chancellor, &c., record of yesterday read, approved and signed, and the following additional proceedings were had, to wit:

STATE OF TENNESSEE on Relation of G. L. MALONEY ET AL.
vs.
STEPHEN P. CONDON ET AL.

This cause was heard before the Hon. Joseph W. Sneed, chancellor, this March 21st, 1901, upon the application of the complainants for an injunction restraining the defendants from holding and exercising the offices now occupied by them and from collecting the emoluments and salaries attaching thereto unless they shall give a bond of indemnity securing the pike commissioners, the workhouse commissioners and the superintendent of the workhouse against all loss or damage by reason of their having been wrongfully ousted from their said offices and deprived of the salaries and emoluments thereof, which motion having been argued by counsel and fully considered by the court, — disallowed, to which action of the court the complainants excepts.

Order Allowing Complainant to Strike Out Clause and Amend Bill.

SATURDAY, *March 23rd*, 1901.

Court met pursuant to adjournment, present and presiding the Honorable Jos. W. Sneed, chancellor, etc., record of yesterday read approved and signed, and the following additional proceedings were had, to wit:

STATE OF TENNESSEE on Relation of GEO. L. MALONEY ET AL.
vs.
STEPHEN P. CONDON ET AL.

In this cause on this March 23rd, 1901, the complainants come and move the court to be allowed to amend their bill by dismissing and striking out the following clause in the fourth paragraph thereof,
8 namely: "That the said defendants may be required to execute bond in a sufficient amount conditioned as required by law to indemnify the said ejected officers from loss or damage by reason of their being deprived of their offices aforesaid, and to hold them harmless by reason of their having ousted them from their said offices," which motion the court is pleased to allow, and said clause is stricken out and the bill is amended accordingly.

Demurrer.

Filed March 29th, 1901. J. F. Chumbley, C. & M.

THE STATE OF TENNESSEE upon the Relation of G. L. Maloney ET AL.
vs.
STEPHEN P. CONDON ET AL.
8058.

The defendants, Stephen P. Condon, James Rich, T. T. McMillan, and H. C. Anderson, demur to the bill filed against them in this cause, upon the following grounds:

First. The only specific allegation in the bill is that the act of

General Assembly of February 8th, 1901, which is attacked by the bill is unconstitutional, fails to repeal by express terms the acts of the assembly under which relators assert that they are entitled to the offices formerly held by them and named in their bill: Whereas defendants say that said act of February 8th, 1901, is a direct and positive act of law, which lays down definitely a new rule covering the subjects to which said act applies; that it is wholly inconsistent with, and in conflict with the act or acts on which complainants, relators, rely; so that said act of February 8th, 1901, and the act or acts on which said relators rely cannot exist together, and therefore the necessary result of passing said act of February 8th, 1901, was and is to repeal the act or acts relied upon by relators in all counties to which said act of February 8th, 1901, applies, and no express repeal was necessary or proper, the repeal by implication being sufficient.

9 Second. In said bill is a misjoinder of parties, in that it joins as complainants the pike commissioners of Knox county, to wit: G. L. Maloney, G. H. Strong, and T. A. Rambo, and the workhouse commissioners, to wit: Sam. Vance, G. L. Maloney, J. F. C. Harrell, S. L. England, and I. N. White, and also R. L. Peters, superintendent of the workhouse, as they were severally designated under the last repeal by the act of February 8th, 1901: Whereas there is no such legal connection between said three parties, nor such a community of interest among them that they are entitled to maintain this bill, nor is there such connection as to enable any two of them to maintain it, nor that others may maintain it for them.

Third. The bill is multifarious in that it joins three separate and independent causes of action in one *suit*, that is:

(1.) The alleged cause of action in favor of complainants, G. L. Maloney, G. H. Strong, and T. A. Rambo, styling themselves as pike commissioners of Knox county.

(2.) The alleged cause of action in favor of complainants G. L. Maloney, Sam. Vance, J. F. C. Harrell, S. L. England, and I. N. White, styling themselves as the workhouse commissioners of Knox county.

(3.) The alleged cause of action in favor of R. L. Peters, styling himself as superintendent of the workhouse of Knox county.

Fourth. Defendants say that they are fully protected in the enjoyment of their offices by said act of February 8th, 1901, which is attacked in the bill, but which is a valid and constitutional act of the General Assembly of the State of Tennessee, duly passed, duly approved, and now in effect.

Wherefore these demurrants pray the judgment of the court.

CHAS. T. CATES, JR.,
J. W. CALDWELL, *Solicitors.*

Final Decree.

SATURDAY, *March 30th*, 1901.

10 Court met pursuant to adjournment, present and presiding the Honorable Jos. W. Sneed, chancellor, &c., record of yes-

terday read, approved and signed, and the following additional proceedings were had, to wit:

THE STATE OF TENNESSEE on Relation of G. L. MALONEY
vs.
STEPHEN P. CONDON ET AL.

This cause was heard this the 30th day of March, 1901, before the Honorable Jos. W. Sneed, judge &c., holding the chancery court of Knoxville, Tennessee, upon the bill of complainants and the demurrer of the defendants thereto, and argument of counsel having been heard, the court is of opinion that the said demurrer of defendants is well taken, and should be sustained, on all the grounds therein set out, and doth so order and decree.

It is therefore ordered, adjudged and decreed that the bill of complainants filed in this cause be, and the same is hereby dismissed, and the complainants, relators, and Green and Shields the sureties on their prosecution bond, pay all the costs of the cause for which execution is awarded.

From the foregoing decree complainants pray an appeal to the next term of the supreme court, to be held at Knoxville on the second Monday in September, 1901, which is granted upon their giving an appeal bond as required by law.

Entries from Rule Docket.

1901, March	11th.	Bill filed, sworn to before C. & M.
"	"	Pros. bond, Green and Shields, sec'ty.
"	"	Copy bill (1600 w'ds) sub. to ans., 4 copies issued to Knox county, all def'ts.
"	18.	Sub to ans. returned, endorsed, executed as commanded, March 12, 1901, M. W. Hardin, D. S. 4 def'ts.
"	21.	Order overruling motion for injunction, 38, p. 33.
"	22.	Order allowing compl'ts to amend bill 38, p. 69.
"	29.	Demurrer to bill as amended, filed.

11

1901, March	30.	Final decree sustaining demurrer and dismissing bill and appeal.
"	"	Bond of compl'ts for appeal with Green & Shields
"	"	Pickle and Turner, securities filed.

Appeal Bond.

Filed 30 Day of March, 1901. J. F. Chumbley, C. & M.

STATE OF TENNESSEE:

Chancery Court at Knoxville.

We, G. L. Maloney *et al.* Green and Shields, Pickle and Turner, acknowledge ourselves indebted to S. P. Condon, *et al.* in the penal

sum of two hundred and fifty dollars, for the payment of which we bind ourselves, our heirs and personal representatives jointly and severally, by these presents, but to be void if the said G. L. Maloney *et al.* shall effectually prosecute their appeal taken to the supreme court of Tennessee, to be held at the court-house in Knoxville, on the second Monday of September next, from the decree rendered against them in the chancery court at Knoxville, on the 30th day of March, 1901, in the case of State on the relation of G. L. Maloney, *et al.*, *vs.* Stephen P. Condon, *et al.*, in said court or failing therein, shall pay the amount adjudged against them in said decree, with interest and damages and all costs and also satisfy the decree that may be rendered against them in the supreme court in the premises.

Witness our hands ans seals the 30th day of March 1901.

G. L. MALONEY ET AL. [SEAL.]
GREEN & SHIELDS. [SEAL.]
PICKLE & TURNER. [SEAL.]

Bill of Costs.

State tax		2.50
County tax		2.25
12	C. & M. J. F. Chumbley, filing bill, 25; aff't 25; pros. bond 75; copy bill, 160; sub. to ans. 75; copies, 1.00; 4 dkts. 40; 2 orders 50; 3 rules, 30; entering decree, 75; taxing cost 50	7.05
Officer, M. W. Hardin, summoning 4 defendants		4.00
		$15.80

March 30, 1901.—Final decree and appeal, 38—p. 129.

Clerk's Certificate.

STATE OF TENNESSEE, }
Knox County. }

I, J. F. Chumbley, clerk & master of the chancery court of Knoxville, do hereby certify that the above and foregoing is a full, true and perfect transcript of the record and the bill of costs in the above-entitled cause as the same appears of record and on file in my office.

Given under my hand and official seal at office, in Knoxville, Tennessee, this April 25, 1901.

J. F. CHUMBLEY, *C. & M.*,
By —— ——, *D. C. & M.*

C. F. Chumbley, appeal bond 75; transcript 4800 w'ds 4.80; seal 50; $6.05

13 In the Court of Chancery Appeals at Knoxville, April Term, 1901.

THE STATE *ex Rel.* —— ——
vs.
S. P. CONDON ET AL. } Chancery Cause No. 15, Knox County.

Filed May 3, 1901. Alex. McMillan, Clerk.

Assignment of Errors and Brief for the Complainant.

Statement of the case.

This bill is brought under section 5165, *et seq.*, Shannon's Code, to test the defendants' right to the office of supt. of public roads, and road commissioners of Knox county, under the act of Feb. 8, 1901. It is brought by the State of Tennessee upon the relation of seven individuals. It alleges that the act under which the defendants claim said offices is unconstitutional and void, that the defendants were appointed to said offices by the governor, and that said appointment is void, that they have usurped the powers and offices of the pike commissioners and the workhouse commissioners and supt. of the workhouse of Knox county.

It further alleges that certain of the relators are members of the workhouse commission, certain other- members of the pike commission, and another, supt. of the workhouse of Knox county, who have been ousted from their offices by the defendants. Trans. pp. 1–5.

The defendants demurred to said bill, assigning four grounds of demurrer.

The first and fourth are to the effect that said act of Feb. 8, 1901, is valid and constitutional, and the appointment of the defendants to said offices is valid, and that they are therefore entitled to hold said offices.

The second and third grounds of demurrer are to the effect that there is a misjoinder of parties, and that the bill is multi-
14 farious, in that it joins, as complainants, the commissioners of the workhouse and commissioners of turnpikes, and the supt. of workhouses, and seeks to have declared their several rights to said offices. Tr. pp. 8–10.

The chancellor sustained this demurrer and dismissed the complainants' bill. Tr. p. 10. The complainants appealed and now comes by its solicitors and assigns errors as follows:

The chancellor erred in sustaining said demurrer and dismissing said bill, and taxing the relators with the costs. He should have overruled said demurrer and held the defendants to answer.

The chancellor was clearly in error in sustaining the second and third grounds of demurrer, on the ground of misjoinder of parties and multifariousness.

This is not the suit of the relators, but the suit of the State of Tennessee. It makes no difference how many relators appear in the case. It does not affect the unity of the State's suit. They simply assume joint liability for the costs. There can be no multi-

fariousness in this bill because it is directed to but one issue, that is to contest the validity of the act in question, and the right of the defendants to the offices created by that act. Those offices are not only created by the same act, but constitute in effect, one and the same office although filled by three individuals, to wit: A board of public road commissioners, one of whom is designated as supt. of public roads. The declaration of the right of the relators to the offices superceded and usurped by the defendants is a mere incident to the main purpose of the bill, and is sought in direct pursuance of authority of the statutes.

It is sufficient to quote here such portions of the code as are applicable to this question.

Sec. 5165 Shannon's Code, provides an action lies under the provisions of this chapter in the name of the State against the person or corporation offending in the following cases:

1. When any person unlawfully holds or exercises any public office or franchise within this State. * * *

15 Sec. 5167 provides, the suit is brought (by bill) in equity filed either in the circuit or chancery court of the county or district in which the office is usurped or held.

Sec. 5168. The suit is brought by the attorney general for the district or county when directed so to do by the General Assembly or by the governor and attorney general of the State concurring.

Sec. 5169. It is also brought on the information of any person, upon such person giving security for the costs of the proceeding, to be approved by the clerk of the court in which the bill is filed.

Sec. 5170. When the suit is brought on the relation of a private individual, it shall be so stated in the bill, and proceedings and such individual is responsible for costs in case they are not adjudged against the defendant.

Sec. 5175. Whenever the action is brought against a person for usurping an office, in addition to the other allegations, the name of the person rightfully entitled to the office, with a statement of his right thereto may be added, and the trial should, if practicable, determine the right of the contesting parties.

Sec. 5184 provides, should the relator die, pending the action, the suit abates, unless by the second term thereafter, it is revived in the name of some person who, on application, and giving security for the costs, is substituted in the place of the deceased relator. If there are several relators, the suit abates only on the death of all.

This last section shows that the office of relator is merely to assume the responsibility for costs, and that it makes no difference how many relators join in the suit.

The chancellor erred in adjudging that said act of Feb. 8, 1901, was a valid and constitutional act, and that the appointment of the defendants to said offices by the governor was valid.

16 1. Said act violates art. II, sec. 8, of the Constitution, in that it enacts vicious class legislation, and also violates art. I, sec. 8, which provides that all valid legislation shall constitute the law of the land. Also in the same regard it violates art. 14, sec. 1, of the amendments to the Constitution of the United States, which

provides that, "—State shall make or enforce any law, which shall abridge the privileges or immunities of the U. S., nor shall any State deprive any person of life, liberty, or property without due process of law, or deny to any person within its jurisdiction, the equal protection of its laws."

This act is not general, applicable to all counties in the State, but it is partial and limited in its operation to Knox county alone. Both by caption and body of the act, it applies to counties having not less than 70000 and not more than 90000 inhabitants by the Federal census. Knox county is the only county in the State coming within this provision. It further appears from the census of 1890 that Davidson and Shelby counties have population in excess of the maximum limit fixed in this act, and therefore can never come within its provisions, without depopulating. All other counties in the State are of less population than the maximum fixed by the act, and of course might come within its provisions by a sufficient increase in population.

The classification permissible under this section of the Constitution must be natural and reasonable, and not arbitrary and capricious. There is no reason appearing for the classification in this act. It would be utterly unreasonable to adopt a classification that would require a county to retrograde and depopulate in order to come within the provisions of this act. Otherwise an act might be validly passed which would be applicable to the county of the least population in the State, and exclude by its maximum limit all other counties, so that no other county could come within its provisions without reducing its population to the limit of the
17 least county in the State. The principle will be the same whether applicable to such county of the least population or any intermediate county, as is done in this act.

See in support of this contention:

Sutton *vs.* State, 12 Pickle, 696—the reasoning as well as the facts of this case, appearing in the body of the opinion, are directly in point. See pp. 706–'9.

Burkholtz *vs.* State, 16 Lea, 71.

Woodard *vs.* Bryan, 14 Lea, 520–'23.

Weaver *vs.* Davidson County, 20 Pickle, 328–'33, which is strongly in point.

Harbison *vs.* Iron Co., 19 Pick., 422.

Ragio *vs.* State, 2 Pickle, 272.

Strattons *vs.* Morrises, 5 Pickle, 499, 521–'23.

Memphis *vs.* Fisher, 9 Baxter, 239.

Pope *vs.* Phifer, 3 Heisk., 701–'5.

The last case at the page referred to in discussing the viciousness of such legislation, and the bad policy of it, is much in point in relation to this particular case.

Class legislation that is vicious cannot be justified or sustained in behalf of counties any more than in behalf of individuals.

Weaver *vs.* Davidson County, 20 Pick., 317–'28.

The legislature may suspend the operation of the general laws of the State, but when it does so, the suspension must be general. It cannot be made for individual cases or for particular localities. Cooley Const. Limitations, p. 490.

Woodard *vs.* Bryan, 14 Lea, 523.

This act is radical and revolutionary, and therefore is the more vicious when restricted in its operation to a single county in the State. The act in question is so clearly a suspension of the general law for the benefit or to the detriment of Knox county as to require no argument to establish the proposition.

18 To save space of quotation, we direct the court's especial attention to the court's language in 3 Heisk. 701–'3, and to the fact that this act deprives the county court of Knox county of its long-established jurisdiction over public roads. Shan. Code, sec. 6038, 1617, 1683, 95.

It likewise uproots the workhouse law as it heretofore existed and still exists in all other counties of the State.

Shannon's Code, sec. 7398 *et seq.*

And also the turnpike law of the State. Shan. Code, sec. 1781, *et seq.*

It likewise imposes by sec. 4, upon the property within the corporate limits of the city of Knoxville, a tax for macadam roads in the county, while the city itself can have no benefit whatever, in such tax. It is compelled to take care of its own streets and sidewalks, and by section 3 of this act, each civil district constitutes a road district, and by section 5, all taxes collected in any road district shall be taxed in that district alone, hence property within municipal corporations will be liable to this tax for the benefit alone of the particular civil district or districts in which the city is located, for the part of said district or districts not embraced within the limits of the city. This is contrary to the policy of all former road laws.

In its provisions for the disbursement of county funds, upon the mere certificate or application of the road commission (sec. 3), or upon the warrant of the county judge, issued without auditing the accounts, and on demand of this road commission (sec. —) it overturns the settled policy of our laws with regard to the appropriation and disbursement of county funds. Shan. Code, sec. 6015–'18 requires that all disbursements of such funds shall be made in pursuance of appropriations by the county court, upon application filed for at least a month before action. And by sec. 517–'18 it is

19 further required that the county judge shall first audit all claims for money against the county, and that no money shall be drawn out of the treasury of the county, except upon his warrant; nevertheless this commission is given the power to employ a superintendent and other employees of the workhouse, at their own discretion, fixing the amount of their compensation, and thus by their own act appropriating and paying out the funds of the county. It practically vests in them the power of taxation and appropriation

of public funds. These radical innovations upon a long-settled policy of our laws, applicable to these subjects, are restricted in their application of Knox county alone, and this, too, in the face of the fact that absolutely no reason can be assigned why this law should be limited to Knox county, and not made applicable to all the counties in the State.

"The power conferred upon county courts to tax cannot be, by any special or local law, taken from the justices as a county court, and conferred on local tribunals of particular counties, composed, even temporarily, of commissioners appointed by the governor. Taxation by the county court preserves the principle of taxation by the representatives of the tax-payers, which the other system infringes."

Pope *vs.* Phifer, 3 Heisk. 363.

2. This act also violates sec. 17 art. 2, of the constitution in that it contains both in its caption and body, two separate and distinct subjects of legislation, to wit: Roads and workhouses. It likewise provides in its body for public roads and also for pikes or macadam roads, the latter not being mentioned in the caption.

These subjects have always been recognized as separate and distinct by all previous legislation thereon, and there can be no necessary connection between roads and workhouses—and whatever kinship there may be between the public roads and pike or macadam roads, they have nevertheless, always been heretofore treated by the legislature as separate and distinct subjects.

20 In the Code of 1858, chap. 5, beginning with sec. 1182, was devoted to the subject of roads and ferries, while chap. 7 was devoted to the subject of turnpikes. This distinction has ever since been kept up. See Shan. Code, sec. 1617, chap. 4, *et seq.* and chap. 6, sec. 1749, *et seq.*

Under this general chap. on turnpikes, art. 3, has always been treated the subject of turnpikes or macadam roads owned by the counties.

As to workhouse laws, they are found in the Code of 1858 under title 7, chap. 1, art. 4, sec. 6256, *et seq.*, under the heading of "Houses of correction." Then follows the workhouse laws of 1875, chap. 83, and this was superceded by the act of 1891, chap. 123, which is still in force.

True, these workhouse laws made provision for the working of the convicts on public roads, under certain conditions, but has always been left to the discretion of the county courts as to whether they should maintain a workhouse at all, whereas the letting out, maintaining and working public roads has always been absolutely enjoined on the county authorities.

We respectfully submit that it contravenes the spirit of this article of the constitution which was expressly adopted to prevent the confusion of two or more subjects into one act of legislation.

This provision originated with the constitution of 1870 and at that time these subjects as treated by the codified laws of the State,

were separate and distinct, and must have been so contemplated by the convention adopting this provision of the constitution.

3. This act also violates sec. 17 of art. II of the constitution, which provides that no county office created by the legislature shall be filled otherwise, than by the people or the county court. This act by section 1 provides for the appointment by the governor of these road commissioners, and supt. of public roads, until the next regular election. These defendants are now claiming under
21 appointment of the governor, said offices, and are therefore not entitled under the foregoing section of the constitution to fill said offices.

Pope *vs.* Phifer, 3 Heish. 700.

In the case of State *ex rel.* Smiley *vs.* Glenn, 7 Heisk. 472, it was held that a county judge was not such a county officer as would forbid the filling of vacancy in the office, by appointment by the governor. This decision is rested upon the fact, that while the county judge is a county officer in one sense, he is likewise a judge, belonging to the judicial department of the State, that he exercises all the duties and functions of a judge, has concurrent jurisdiction with the circuit and chancery courts, may interchange with judges of other counties, etc., and therefore he is not such an officer as is contemplated by that provision of the constitution.

See 7 Heisk. pp. 486–'7.

So also the case of Cook *vs.* State, 6 Pick. 407–'14, holding that commissioners of registration are not county officers in the contemplation of that section of the constitution and therefore might be appointed by the governor. But it certainly cannot well be contended that the commissioners authorized by this act in question, are anything more than county officers. Their jurisdiction and powers are limited absolutely to the county. The subjects with which they deal under said act are local improvements, and the county workhouse, which cannot directly affect any other part of the State, except the county for which they are appointed. If they are not county officers in the sense of this provision of the constitution, it is hard to define any class of officers, that would fall within that provision of the constitution.

The fact that this act provides for the election of these commissioners at the next general election, does not relieve it in the slightest from this objection. There is no qualification, whatever, in this provision of the constitution. It is absolute and in as plain words as the English language affords, to wit, "No county offices created by the legislature shall be filled otherwise than by
22 the people or the county court."

It is a mere quibble of words to say that the appointment to a vacancy is not filling the office. Besides that, this provision of the constitution contemplates not only the election by the people but the action of the county court, and that the county court is the proper authority to fill such vacancies or partial terms, as may occur before the regular elections by the people. This provision evidences

the purpose of the constitutional convention to guarantee local self-government to the several counties of the State, which intention and provision is so openly and flagrantly violated by the enactment of this particular statute.

It takes away from the county court and the commissioners elected by said court, and commits to the control of the appointees of the governor, these objects of highways, turnpikes and workhouses, which are purely local in their nature and have always been regarded as subjects for local regulation and control. If this statute can be maintained, it will appear that the legislature can legitimately control, directly by its own enactments or indirectly by commissioners appointed by the governor all local affairs of any county or municipality, and our cherished idea of local self-government would necessarily have to be expanded to the idea of State government.

For the errors the decree of the chancellor should be reversed, and the cause remanded for further proceedings.

GREEN AND SHIELDS.
PICKLE AND TURNER.

23 THE STATE OF TENNESSEE upon the Relation of G. L. Maloney *et als.* *vs.* STEPHEN P. CONDON ET ALS. } From the Chancery Court of Knox County.

Filed Apr. 30, 1901. J. G. Stuart, D. C. Refiled Sept. 25, 1901. Alex. McMillan, Cl'k.

Reply for the Defendants, Condon et als.

"I."

The defendants accept the statement of the case made in the brief for complainants, reserving the right to show the facts more fully from the record.

"II."

We insist that both grounds of demurrer, based upon multifariousness, are good. We insist that this is not the suit of the State of Tennessee, but the suit of relators, and that the case is not directed solely to the one question of the validity of the act of the legislature, referred to in the pleadings and the right of defendants to hold the offices created by said act. It is true that defendants hold but one office, but the relators charge that in holding this one office they usurp two or three different offices to which the relators, as distinguished in the bill, are respectively entitled. While we insist that the act is good as a whole, and may not be disturbed by the courts, it is possible that at least it might be valid as respects one class of the complainants, and not as respects another class. For this and for other reasons we insist that the chancellor was right in holding the demurrer good upon the two grounds referred to.

"III."

We insist that the chancellor was right in holding the act of February 8, 1901, to be valid and constitutional in all respects. We deny that said act violated article XI, sec. 8 of the constitution, in that it is vicious class legislation or that it violates article
24 XIV, sec. 1 of the amendments to the Constitution of the United States by depriving any person of life, liberty or property, without due process of law, &c. We insist that the act is in all respects valid. In fixing the population limits at from 70000 to 90000 it has the support of long-established law in Tennessee.

Upon this point we submit first that every intendment is in favor of the constitutionality of the act of the legislature, and that every reasonable doubt must be solved in favor of the legislative action. Cole Mfg. Co. *vs.* Fall, 90 Tenn. 469.

All class legislation is not invalid. Class legislation which is natural and reasonable has uniformly been upheld by the supreme court of Tennessee, and by the Supreme Court of the United States. State *vs.* Brewing Co., 104 Tenn. 731.

That it is not unconstitutional to classify counties by legislation in such a way that certain counties cannot come within a certain class without a decrease of population has been clearly declared by the Supreme Court. Weaver *vs.* Davidson Co., 104 Tenn. 330.

The sole test of the validity of class legislation is reasonableness. Under the present act even by complainant's admission, every county in the State, except two, can by increase of population come within the provisions of this act. If half the counties were in the position of Davidson and Shelby counties, as stated in complainant's brief, that would not make the act unconstitutional, provided there was some reason for adopting such a classification; the State may distinguish, select and classify objects of legislation, and necessarily the power must have a wide range of discretion. 170 U. S. 294; State *vs.* Brewing Company, 104 Tenn. 732. "And this because of the function of legislation and the purposes to which it is addressed. Classification for such purposes is not invalid because not depending on scientific or marked differences in things or persons or in their relations. It suffices if it is practical and is not reviewable unless palpably arbitrary." State *vs.* Brewing Co., 104 Tenn., 732, 733, and authorities cited.

25 In the case now on trial, there is nothing to show that the classification is palpably arbitrary, and there can be no review unless it is palpably arbitrary.

The sole test is reasonableness; every intendment is in favor of reasonableness. Subject to the rule of reasonableness the discretion of the legislature to classify is practically unlimited.

It may be that the act is at present limited in operation to a single county, but every county of inferior population may acquire the necessary population, and it is by no means inconceivable that the counties of Shelby and Davidson might also come within its limits. But whether this be true or not, we insist that there is nothing to show that the classification is palpably arbitrary, and that the pre-

sumption in favor of the reasonableness of the legislative action must prevail.

Complainant endeavors to treat the present act as a suspension of the general laws of the State. We submit that there is nothing of the kind in the act. There are hundreds of such laws on the statute books of the State and they have been uniformly upheld.

The fact that the act is regarded by the complainants as radical and revolutionary is not to be considered in this case nor would the fact that it was actually radical and revolutionary. In a certain sense every repealing act is radical and revolutionary, but not in a sense objectionable to the law.

If it be conceded that the act in question deprives the county court of Knox of a long-established jurisdiction over public roads, the concession would be unimportant. The county court is the creature of the statute, having no rights except those conferred by statute, and none which cannot be taken away from it by statute. Railway Co. vs. Wilson, 89 Tenn. 600–601. If any right be in fact taken from the county court by this act it is merely the right to choose commissioners, and this right is vested not in any new
26 tribunal, but in the people, and the prople certainly have the right to elect all officers when not expressly deprived of such right by the constitution or by other positive law. The section of the constitution relied upon by the complainants certainly confers as much right upon the people to elect the county officers as it confers upon the county court.

It is insisted by complainants that the act in question "uproots" the workhouse law as it heretofore existed, and still exists in all other counties of the State. We submit, first, that the workhouse law here referred to is comparatively new, and that when it was enacted it uprooted a preceding law, and we are unable to see why this law, which so recently uprooted another, may not in its turn, properly be uprooted by the present law.

Complainants object to the act because it imposed a tax upon property within the limits of the city of Knoxville for support of macadam roads in the county. No reason is shown why this may not be done, and as a matter of act it is done by the very act of the legislature under which complainants claim to hold office. See Shannon's Code sec. 1788.

They further object to the act because certain disbursements of county funds are made by the road commissioners, whereas disbursements of a precisely similar characeter are made under the law under which complainants formerly held office. Shannon's Code, secs. 7409, 7410.

No reason is shown why the change should not be made, if, as a matter of fact it had been made as to these disbursements. Undoubtedly the legislature has the power to make such changes, and complainants seem to object to the policy of the legislature rather than to question its authority in the premises. If it should be seriously insisted that the power of taxation is conferred upon the commissioners, we can see no way of meeting the proposition except by traversing it. Nothing within any conceivable ingenuity can sup-

port the statement that any power of taxation is vested in
27 the road commissioners.

To the objection that the act violates section 17, art. 2, of the constitution, because it embraced in its caption and in its body two separate subjects, to wit, roads and workhouses, we say: First, that when the legislature has a particular purpose to accomplish, it may include in one act and under a general caption everything that is reasonably necessary to the accomplishment of that purpose. Where a subject is general, or a purpose single, all matters naturally and reasonably connected with it, and all measures which will or may facilitate the accomplishment of the purpose so stated, are properly included in the act, and are germane to its title. 90 Tenn. 484. See also State *vs.* Brown, 103 Tenn. 450.

The general purpose of this act is to secure a good system of public roads and it was proper therefore to embrace in the act everything reasonably connected with that purpose, and every measure which might facilitate its accomplishment.

It is true historically that the working of convicts upon the public roads is an established part of the public policy of Tennessee. It is also true that this policy has now the sanction of positive law. See Shannon's Code, sec. 1642.

The two subjects of public roads and workhouses have been connected in the history and in the legislation of Tennessee until that connection has become fixed and permanent. As a matter of policy it was clearly right that the commissioners being charged with the supervision of the road system, should also have charge of the convicts, so that the efficiency of their work might not be impaired by a divided jurisdiction.

We say further that if the two subjects had not been heretofore connected by positive legislation, there is no reason why they should not now be connected. There is no inherent incompatability. There is no radical or legal reason why they should
not be connected. In the developments of modern life,
28 many changes of law are made, and for the accomplishment of proper purposes, legislatures necessarily treat as connected many subjects heretofore separately treated. We submit the following quotation as a fair statement of a general principle which fully meets the contention of the complainants upon this point: "In titles relating to counties and county officers, general provisions may embrace subsidiary and germane matters; an act to increase the boundaries of a county may embrace provision for extending the borders of the county, locating the seat of justice and accepting donations for the public buildings." 23 Am. & Eng. Ency. Law 250, 251. The act in question is strictly analagous to an act creating a municipal corporation. An act, entitled An act to incorporate the town of Knoxville, would justify the insertion into the act of many provisions and principles, far more inconsistent with one another than the matters covered by the present act could possibly do.

It is finally insisted that the act violates section 17 of art. XI, because while at the next general election and always thereafter, the commissioners are to be elected by the people, they are at the out-

set, and until an election can occur to be appointed by the governor. We insist that it is not only logical and reasonable but that it is clearly established by the decisions of the supreme court, that temporary appointments of this kind can be made by the governor. This is clearly held in the case of State upon the relation of Smiley *vs.* Glenn, 7th Heis, pages 493, 494.

Finally we call attention to the fact that under the present act the board of public road commissioners must give bonds to Knox county subject to the approval of the county judge; they must account to the county court for all their expenditures and they are subject to impeachment by the county court, and vacancies caused by impeachment or otherwise, may be filled by the county
29 court until the next regular election. See act in question, sec. 15. In the matter of laying out public roads, there is an appeal to the county court. See sec. 6.

The act is not substantially different from the one under which the road system in the several counties in the State has heretofore been operated. The county court approves the bonds of the commissioners, exacts financial settlements from them, has the power to impeach them and has the right to supervise their action is laying off and opening public roads. Therefore the county court is not, in any respect, deprived of any act, and the act is a wise and well-considered one in aid of increased efficiency in the department to which it applies.

We have not considered it necessary to set out in full the reasoning upon which we rely for support of the several propositions herein submitted, because we have already prepared and filed a more elaborate brief covering the same points in the case of Condon *et als. vs.* Maloney, county judge, now pending in this court.

C. T. CATES, JR.,
J. W. CALDWELL,
For Condon et als.

30 STATE OF TENNESSEE *ex Rel.* GEO. L. MALONEY *et al.* *vs.* STEPHEN P. CONDON ET AL. } Knox County.

Filed Aug. 24, 1901. J. G. Stuart, D. C.

Opinion.

This is a bill in the nature of a *quo warranto* proceeding to test the right and title of defendants S. P. Condon, T. T. McMillan, James Rich and H. C. Anderson, to certain offices which they had entered upon under an act of the legislature, passed Feb. 8, 1901, providing for a board of public road commissioners.

The principal question in the case is as to the constitutionality of the act. This bill was filed on Mar. 11, 1901, by T. A. Rambo, G. L. Maloney, G. H. Strong, S. L. England, Sam. Vance, J. F. C. Harrell, and R. L. Peters against S. P. Condon, T. T. McMillan,

James Rich, and H. C. Anderson, and was filed in the name of the State on information of these relators, against the said defendants.

In the bill it was averred that the relators, G. H. Strong and T. A. Rambo were duly and legally elected by the county court of Knox county members of the pike commission for Knox county, for the term of four years from 1898; that the relators Vance and Harrell were elected members of the workhouse commission by the county court of Knox county at its January term, 1901; that S. L. England and I. N. White were elected commissioners of the workhouse of Knox county in January, 1900; that R. L. Peters was elected superintendent of the workhouse in January, 1898; that Geo. L. Maloney, as judge of the county court, was *ex officio* chairman of the workhouse commission. That on Feb. 8, 1901, the General Assembly passed an act creating the board of public road commissioners, the title and provisions of which are set out. That under and in pursuance of this act Governor Benton McMillin had appointed defendants S. P. Condon, James Rich and T. T. McMillan as the board of public road commissioners, defendant Condon
31 being superintendent of the public roads, and the other two defendants appointed as associate members of the road commission; that these defendants under and by virtue of their appointment and commission gave bond and qualified Mar. 20, 1901, and were then attempting to perform the duties of the offices.

It was alleged that this act did not repeal the act under which the defendants had been appointed and were acting, and second; that the act was unconstitutional and void, and that the relators have been unlawfully and illegally and wrongfully ejected and ousted from their positions and the defendants were illegally, unlawfully and wrongfully holding and exercising the offices of public road commissioners and superintendent of roads and were usurpers of these offices.

The prayer was that the parties named as defendants be made so by proper process, and an injunction prayed asking that they be enjoined from holding the offices of road commissioners or superintendent of public roads; that the act in question be declared unconstitutional and void and as conferring no rights on the defendants.

A demurrer was filed March 29, 1901, and the grounds set out; that the bill was founded solely on the assumption that the act under which the defendants were appointed was unconstitutional, and that this was not true as a matter of law, second that there was a misjoinder of parties, in that different complainants holding different offices were joined together; that the bill was multifarious for the same reason. The demurrer was heard Mar. 30, and the demurrer sustained and the bill dismissed.

As to the first ground that the bill was multifarious and a misjoinder of parties we deem it sufficient to say that while there were several relators, the bill is in the nature and on behalf of the State and the object of the bill was to test the constitutionality of the act of Feb. 8, 1901, and the right of defendants to exercise the
32 offices which they were claiming to hold and under which

they had ejected complainants from their various offices, and we think the bill is not demurrable on that ground.

The second ground is that the bill was founded solely on the assumption that the act of 1901, was unconstitutional. This is obviously true and the real and only serious question in the case is as to the constitutionality of this act.

This question is raised and fully discussed in the opinion of this court rendered thereon in the case handed down at the same time as this opinion of S. P. Condon *et al. vs.* Geo. L. Maloney, judge. The result reached in that case was that we held the act in question to be constitutional. The defendants have qualified under that act and entered upon the discharge of their duties, and are entitled therefore to hold these offices according to the provisions of the act in question. It therefore results that the demurrer of the defendant should have been sustained, and the decree of the chancellor dismissing the bill is in our opinion correct and is affirmed with costs.

All concur.

R. M. BARTON, JR., *Judge Ac.*

33 Court of Chancery Appeals of Tennessee, at Knoxville, April Term, 1901.

THURSDAY, *August* 29, 1901.

Court met pursuant to adjournment.

Present and presiding: The Hon. Judges R. M. Barton, M. M. Neil, and S. F. Wilson.

The minutes of yesterday were read and signed, when the following proceedings were had, to wit:

STATE OF TENNESSEE *ex Rel.* G. L. MALONEY ET AL. *vs.* STEPHEN P. CONDON. } Affirmed and Appealed.

This cause was heard this 29th day of August, 1901, before the hon. court of chancery appeals, of the State of Tennessee, upon the transcript of the record from the chancery court of Knox county, the assignment of errors by the appellant and the reply of the appellees thereto, and argument of counsel having been heard, the court is of the opinion that complainants are not entitled to maintain their bill, and that the decree of the chancellor should be affirmed.

It is therefore ordered, adjudged, and decreed that the same be and it is hereby affirmed.

The costs of this court will be paid by the appellants, G. L. Maloney *et als.*, and the sureties on their appeal bond, Green and Shields, and Pickle and Turner, for which execution is awarded. The costs of the court below will be paid as ordered in the chancellor's decree.

The opinion and finding of the court of chancery appeals being in writing is made a part of the record in this cause and will be attached to the transcript.

From the foregoing decree, Geo. L. Maloney *et als.*, complainants below, pray an appeal in the nature of a writ of error to the next term of the supreme court at Knoxville, on the second Monday of September, 1901, which is granted.

34 In the Supreme Court at Knoxville, Tenn., September Term, 1901.

STATE *ex Rel.* GEO. L. MALONEY ET AL. *vs.* STEPHEN P. CONDON ET AL. } No. —. From Knox County.

Filed Sept. 21, 1901. Alex. McMillan, Clerk.

Assignment of Errors and Brief on Behalf of Relators.

Statement of the case.

I.

This is a proceeding in the nature of a *quo warranto*, brought by the State, on the relation of certain citizens of Knox county, averring that the defendants in assuming to act as a board of road commissioners, and to manage and control the public roads and workhouses of Knox county, are acting without authority of law, and are usurpers of said offices. The chancellor dismissed the bill upon demurrer, and the complainants have appealed. The court of chancery appeals have sustained the chancellor's decree, and complainants have appealed from that decree, and assign errors as follows:

II.

Assignment of Errors.

The court of chancery appeals erred in sustaining the constitutionality of the act of 1901, (Acts 1901, chap. 8) under which the defendants were appointed road commissioners by the governor of the State.

Said act is unconstitutional for several reasons:

1. It constitutes vicious class legislation, and thereby violates art. 1, sec. 8 and art. 11, sec. 8, of the State constitution, and the 14 amendment to the Federal Constitution.

Sutton *vs.* State, 96 Tenn. 696.;
Burkholtz *vs.* State, 16 Lea, 71;
Woodward *vs.* Bryan, 14 Lea, 520;
35 Weaver *vs.* Davidson County, 104 Tenn. 328;
Harbison *vs.* Iron Co., 103 Tenn. 422;
Ragio *vs.* State, 86 Tenn. 272;
Strattons *vs.* Morrises, 89 Tenn. 499;
Mamphis *vs.* Fisher, 9 Baxter 239;
Pope *vs.* Phifer, 3 Heisk. 701;
Cooley on Const. Limitations, 490.

2. Said statute embraces in its caption and body two distinct subjects of legislation, to wit: roads and workhouses, and thereby violates art. 2, sec. 17 of the State constitution.

See cases above cited.

3. Said act violates art. 11, sec. 17 of the constitution in that it authorizes the governor to appoint road commissioners who are county officers, and therefore electible by the people or the county court.

Pope *vs.* Phifer, 3 Heisk. 700.
State *ex rel. vs.* Glen, 7 Heisk. 472.

Wherefore relators insist that said decree should be reversed, and their bill sustained.

GREEN & SHIELDS,
PICKLE & TURNER,
For Relators.

36 Filed Sept. 30, 1901. J. G. Stuart, D. C.

STATE OF TENNESSEE *ex Rel.* G. L. MALONEY ET ALS.
vs.
STEPHEN P. CONDON ET ALS.

This cause was decided in favor of appellees, Condon *et als.* by the court of chancery appeals, in affirmation of the decree of the chancellor. No questions are now raised by appellants which were not raised before the court of chancery appeals, and only questions of law are presented. The appellees to avoid encumbering the record unnecessarily, hereby adopt the brief filed by them in the court of chancery appeals and have refiled the same, as an answer to the assignment of errors in this honorable court.

C. T. CATES, JR.,
J. W. CALDWELL,
For Condon et als.

37 Supreme Court of Tennessee, at Knoxville, September Term, 1901.

FRIDAY, *November* 13, 1901.

Court met pursuant to adjournment.

Present and presiding: The Hon. Chief Justice D. L. Snodgrass, and the Hon. Associate Justices W. C. Caldwell, John S. Wilkes, W. K. McAlister, and W. D. Beard.

The minutes of yesterday were read and signed, when the following proceedings were had, to wit:

STATE OF TENNESSEE *ex Rel.* GEORGE L. MALONEY ET AL.
vs.
STEPHEN P. CONDON ET AL.
} Affirmed.

This cause was heard on this 15th day of November, 1901, before the hon. the supreme court of Tennessee, on the transcript of the

record from the chancery court of Knox county, Tennessee, the written finding of facts and the opinion of the court of chancery appeals, the assignment of error by the appellants, the reply thereto by the appellees, and argument of counsel, from all which the court is of opinion and doth decree first, that chapter (8) eight of the published acts of the General Assembly of the State of Tennessee for the year 1901, passed and approved February 8, 1901, and entitled "An act to create a board of public road commissioners, to regulate the laying out and working of public roads in this State, in counties having a population of not less than 70,000 and not more than 90,000 under the Federal census of the year, 1900, or any subsequent Federal census, and to provide a method for the management and control of county workhouses in counties coming under the provisions of this act" is a valid and constitutional act; and second that there is no error in the decree of the chancellor or in the decree of the court of chancery appeals, which decrees are accordingly hereby in all things affirmed. The costs of this court will be paid by appellants Geo. L. Maloney and others and sureties on the appeal bond, Green and Shields and Pickle & Turner; the costs of the lower court will be paid as heretofore decreed in them
38 respectively, for all which execution is here awarded.

The complainants raised, relied upon and on the hearing pressed the question by oral and printed arguments that said act, to wit, ch. 8, Acts 1901, violated and was in conflict with the XIV amendment to the Federal Constitution, and was on that account invalid; that it denied to the people of Knox county the equal protection of the laws, anridging their privileges and depriving them of rights without due process of law.

These contentions are overruled, the court being of opinion the statute and action complained of are not forbidden by the XIV amendment.

STATE OF TENNESSEE *ex Rel.* —— ——
vs.
STEPHEN P. CONDON ET AL.

Assignment of Errors for the Supreme Court of the United States.

SATURDAY, *November* 16, 1901.

The complainants, by their solicitors, except to the action and decree of the supreme court of the State of Tennessee sustaining the road and workhouse law of Knox county, chapter 8, of the Acts of 1901, and holding that the same is not void, and refusing to hold said act in conflict with the XIV amendment to the Constitution of the United States, and assign this as error upon said decree.

39 UNITED STATES OF AMERICA, *ss:*

To Stephen P. Condon, T. T. McMillan, James Rich, and H. C. Anderson, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States to be holden in the city of Washington, within thirty days from the date hereof, pursuant to a writ of error prosecuted by the complainant in the case of The State of Tennessee, *ex rel.* G. L. Maloney *et al. v.* Stephen P. Condon, T. T. McMillan, Jas. Rich & H. C. Anderson, to reverse a decree therein of the supreme court of Tennessee, to show cause, if any there be, why the decree in said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 15th November, in the year of our Lord nineteen hundred and one, and of the Independence of the United States of America one hundred and twenty-five.

D. L. SNODGRASS,
Chief Justice of the Supreme Court of Tennessee.

Filed Nov. 16, 1901.
ALEX. McMILLAN, *Clerk.*

[Endorsed:] State *ex rel.* —— —— *v.* S. P. Condon *et al.* Citation. We acknowledge service of the within and foregoing citation and of the writ of error therein mentioned for and on behalf of the appellees, S. P. Condon, Jas. Rich, T. T. McMillan and H. C. Anderson. Nov. 16, 1901. Joshua W. Caldwell, att'y for Condon *et als.*

40 Filed Nov. 16, 1901. Alex. McMillan, Clerk.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the supreme judicial court of the Commonwealth of Tennessee, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme judicial court of the Commonwealth of Tennessee, before you or some of you, being the highest court of law or equity of the said Commonwealth in which a decision could be had in the said suit between The State of Tennessee on the relation of G. L. Maloney *et al.*, complainants, and Stephen P. Condon, T. T. McMillan, Jas. Rich, & H. C. Anderson, defendants, wh-rein was drawn in question the validity of a statute of the said State, to wit, chapter 8, Session Acts of 1901, on the ground that it was repugnant to the XIV amendment to the Constitution of the United States, and the decree was in favor of the validity of said statute in said State supr-me judicial court: a manifest error hath happened, to the great damage of the said State of Tennessee

on the relation of said G. L. Maloney, *et al.*, as by its complaint appears. We being willing that *that* error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, D. C., on the second Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

41 Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, the 15th day of November, in the year of our Lord one thousand nine hundred and one.

[The Seal of the Circuit Court, District of East Tenn.]

HENRY O. EWING, *Clerk*,
By J. T. CARTER,
Deputy Clerk U. S. Circuit Court for the Eastern District of Tenn.

Allowed by—
D. L. SNODGRASS, *C. J.*

41½ [Endorsed:] No. — State *ex rel.* —— —— vs. S. P. Condon *et al.* Writ of error. Pickle & Turner, attorneys-at-law, office in Deaderick building, Knoxville, Tenn.

42 Know all men by these presents that we, T. A. Rambo, G. L. Maloney, G. H. Strong, S. L. England, Sam. Vance, J. F. G. Harrell, and R. L. Peters, as principals, and Pickle & Turner as sureties, are held and firmly bound unto Stephen P. Condon, T. T. McMillan, James Rich, and H. C. Anderson in the full and just sum of five hundred dollars, to be paid to the said obligees, their certain attorneys, executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our *sales* and dated this 15th November, A. D. 1901.

Whereas, lately at a session of the supreme court of Tennessee, in a suit pending in said court between the State of Tennessee, on the re*al*tion of the above-named obligors against the above-named obligees, a decree was rendered against the complainants, the plaintiffs in error herein, who have obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and citation directed to the said obligees citing and admonishing them to be and appear at the United States Supreme Court, to be holden at the city of Washington, within thirty days from the date hereof:

Now the condition of the above obligation is such that if the said

State of Tennessee, on the relation of the above-named obligors shall prosecute said writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, otherwise to remain in full force and effect.

T. A. RAMBO,
G. L. MALONEY,
G. H. STRONG,
S. L. ENGLAND,
SAM. VANCE,
J. F. C. HARRELL,
R. L. PETERS, *Principals*,
By G. W. PICKLE,
PICKLE & TURNER,
Solicitors.

Approved this 15th Nov., 1901.

D. L. SNODGRASS, *C. J.*

Endorsed: Bond. Filed Nov. 16, 1901. Alex. McMillan, clerk.

43 Clerk of the Supreme Court:

Transcript $20.00; seal .50; fil'g citation .50; fil'g writ of error .50; fil'g bond .50; fil'g assmt. of error .50; paid by complainants..... $22.50

ALEX. McMILLAN, *Clerk.*

Office of the Clerk of the Supreme Court for the Eastern Division of the State of Tennessee, at Knoxville.

I, Alex. McMillan, clerk of said court, do hereby certify that the foregoing is a full, true, and correct copy of the transcript and the record of all proceedings had in this cause, except the written opinion filed by the supreme court in this case, which is in hands of court for correction and will be certified when returned to office, as the same appear of record and on file in my office in this cause.

In testimony whereof I have hereunto set my hand and affixed the seal of the court at office in Knoxville, Tenn., on this the 7th day of December, 1901.

[Seal of the Supreme Court, Knoxville, Tenn.]

ALEX. McMILLAN, *Clerk.*
J. G. STUART, *D. Clerk.*

Endorsed on cover: File No. 18,349. Tennessee supreme court. Term No. 496. The State of Tennessee on the relation of G. L. Maloney *et al.*, plaintiffs in error, *vs.* Stephen P. Condon, T. T. McMillan, James Rich, and H. C. Anderson. Filed December 10th, 1901.